STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of SLS, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

LDS,

Respondent-Appellant,

and

LRS,

Respondent.

UNPUBLISHED
May 25, 2010

No. 294286
Macomb Circuit Court
Family Division
LC No. 2008-000236-NA

Before: MARKEY, P.J., and ZAHRA, and GLEICHER, JJ.

PER CURIAM.

Respondent LDS appeals as of right from an order that terminated her parental rights to the minor child pursuant to MCL 712A.19b(3)(c)(*i*), (g), and (j).[1] We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Respondent claims that 15-year-old SLS was given too much control of the case and that, by allowing her to make the decision regarding whether to engage in visits, the court and petitioner essentially gave up on reunification efforts. Respondent believes that leaving such a decision with a minor was inappropriate. Respondent also contends that the September 18, 2008, in camera interview that the referee conducted with SLS regarding continued visitation was inappropriate.

[1] Although the referee did not specifically address subsection 19b(3)(j), it was listed as grounds for termination in the January 15, 2009 petition and the same evidence that supports termination pursuant to subsection 19b(3)(c)(*i*) and (g), supports termination pursuant to subsection (j).

This Court recently held that "there is no authority that permits a trial court presiding over a juvenile matter to conduct in camera interviews, on any subject whatsoever, with the children." *In re HRC,* 286 Mich App 444, ___; ___ NW2d ___ (2009). Unlike a custody dispute in which a child may be interviewed in camera to determine her preference as between her two parents without the trauma of voicing that preference in open court, there was no need for any such protection in a juvenile proceeding. *Id.* at 451-452. In *HRC* the trial court found clear and convincing evidence to terminate the respondents' parental rights after the father had sexually and physically abused the children and that the mother failed to protect the children from the abuse. *Id.* at 449. However, the trial court was not ready to make a best interest determination, noting that a strong bond existed between the parents and the children. Only after the trial court conducted in camera interviews with each of the children did it conclude that termination was in their best interests. *Id.* at 453. This Court concluded that "a trial court presiding over a juvenile proceeding has no authority to conduct in camera interviews of the children involved" and that it was plain error for the trial court to do so. *Id.*

Pursuant to *HRC,* we conclude the lower court erred when it conducted in camera interviews of SLS. However, respondent did not object to the trial court's decision to conduct these interviews. Thus, respondent must demonstrate a plain error that affected her substantial rights. *In re Williams*, 286 Mich App 253, 274; 779 NW2d 286 (2009). This Court should reverse only if respondent establishes that "the error seriously affected the fairness, integrity, or public reputation" of the proceedings. *People v Carines,* 460 Mich 750, 774; 597 NW2d 130 (1999).

Contrary to the conclusion reached by our dissenting colleague, we conclude that the lower court's error was harmless. Unlike *HRC,* in this case SLS testified in open court that it was in her best interests to have respondent's parental rights terminated. Respondent was provided a full and fair opportunity to cross-examine SLS, yet she elected not to do so. Thus, it cannot be said that respondent was denied fundamental due process. Moreover, the notion that SLS did not want to be unified with respondent was not something that surfaced for the first time at the best interest hearing. Virtually all of the evidence presented below supports the notion that it was not contrary to SLS's best interests for respondent's parental rights to be terminated. MCL 712A.19b(5). We therefore conclude that respondent failed to show that her substantial rights were affected. *Wolford v Duncan,* 279 Mich App 631; 757 NW2d (2008).

The trial court did not clearly err in finding that the statutory grounds for termination of respondent's parental rights were established by clear and convincing evidence. *In re Trejo,* 462 Mich 341, 355; 612 NW2d 407 (2000). SLS first became a court ward in February 2007. The conditions causing her removal were respondent's mental illness and substance abuse. Respondent had given then 12-year-old SLS a knife and asked SLS to kill her and then stab herself. Respondent complied with her parent agency agreement (PAA) and SLS was returned to her care in February 2008, only to be removed two months later for exactly the same reasons. SLS reported that respondent began drinking again almost immediately. She began making homicidal and suicidal threats and was placed in a psychiatric hospital. During the pendency of this most recent case, respondent had numerous police contacts and hospitalizations. She called the court in what sounded like an intoxicated state. She also appeared at the last day of the termination hearing in an intoxicated state. The worker acknowledged that respondent was in compliance with many aspects of her PAA, but it was clear that she was not benefiting from

services. The evidence demonstrated that, 14 months after SLS was removed, the conditions leading to adjudication continued to exist, respondent was without the ability to provide SLS with proper care or custody, and SLS would likely be harmed if returned to respondent's care. There was no reasonable probability that respondent would rectify the conditions or be in a position to care for SLS within a reasonable time.

Having found the foregoing subsections proven by clear and convincing evidence, the trial court had to make an affirmative finding that termination of respondent's parental rights was in SLS's best interests. MCL 712A.19b(5). As noted above, this was the second time SLS was removed from her mother's care. She spent a year under court supervision and out of respondent's care from February 2007 to February 2008. Once returned, she was home for only two months before respondent began drinking and acting erratically. In this most recent case, SLS was out of her mother's care for 14 months. Although she was unhappy with her current placement, SLS ultimately concluded that she would "probably be better off with them terminating my mom's parental rights . . . it's doing no good to me and no good to her to have to keep coming back here." SLS was entitled to permanence and stability.

Affirmed.

/s/ Jane E. Markey
/s/ Brian K. Zahra